



COPY

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Counterclaimant IXIA

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

INEOQUEST TECHNOLOGIES, INC.,

Plaintiff,

vs.

IXIA,

Defendant.

IXIA,

Counterclaimant,

vs.

INEOQUEST TECHNOLOGIES, INC.,

Counterdefendant.

Case No. CV08-7773-GHK (PLAx)

**IXIA'S FIRST AMENDED ANSWER,
AFFIRMATIVE DEFENSES,
COUNTERCLAIMS, AND DEMAND
FOR JURY TRIAL**

Complaint Filed: November 25, 2008

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1
2 Defendant IXIA, by its attorneys, BRYAN CAVE LLP, as and for its First
3 Amended Answer, Affirmative Defenses, and Counterclaims to Plaintiff's
4 Complaint, states as follows:

5 1. Ixia admits that plaintiff, IneoQuest Technologies, Inc. ("IneoQuest")
6 brings this action against Ixia ("Ixia") and that the Complaint speaks for itself. Ixia
7 denies that IneoQuest is entitled to prevail on any of its claims, and denies all
8 allegations contained in Paragraph 1 of the Complaint, except as specifically
9 admitted herein.

10 2. Ixia admits that IneoQuest has performed work in the referenced fields
11 and that IneoQuest placed its Media Delivery Index ("MDI") in the form of a
12 Request for Comments ("RFC") to the Internet Engineering Task Force ("IETF").
13 Ixia denies all allegations contained in Paragraph 2 of the Complaint not specifically
14 admitted herein.

15 3. Ixia admits that it has had an established presence in data and voice
16 network-transport fields. Ixia denies all allegations contained in Paragraph 3 of the
17 Complaint not specifically admitted herein.

18 Parties

19 4. On information and belief, admitted.

20 5. Admitted.

21 Jurisdiction And Venue

22 6. Ixia admits that IneoQuest purports to state a claim for patent
23 infringement under the Patent Act, and that subject matter over the patent action
24 exists in this Court. Ixia denies all allegations contained in Paragraph 6 of the
25 Complaint not specifically admitted herein.

26 7. Denied.
27
28

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1 8. Ixia admits that personal jurisdiction exists in this case. Ixia denies all
2 allegations contained in Paragraph 8 of the Complaint not specifically admitted
3 herein.

4 9. Ixia admits that venue for the patent claims exists in this case. Ixia
5 denies all allegations contained in Paragraph 9 of the Complaint not specifically
6 admitted herein.

7 10. Admitted.

8 11. Ixia admits that one method of providing information over a network is
9 via "streaming media" and that other alternative delivery mechanisms exist,
10 including offering content in a single downloadable file. Ixia denies all allegations
11 contained in Paragraph 11 of the Complaint not specifically admitted herein.

12 12. Ixia admits that one method of transporting streaming video content
13 from one location to another over a network is by using Internet Protocol (IP)
14 "packets." Ixia denies all allegations contained in Paragraph 12 of the Complaint
15 not specifically admitted herein.

16 13. Ixia admits that the referenced technologies use IP packets. Ixia denies
17 all allegations contained in Paragraph 13 of the Complaint not specifically admitted
18 herein.

19 14. Admitted.

20 15. Admitted.

21 16. Admitted.

22 17. Admitted.

23 18. Ixia is without sufficient information to admit or deny the allegations of
24 Paragraph 18 of the Complaint as they are set forth, and therefore denies them.

25 19. Ixia admits that, under certain circumstances, downstream video
26 equipment can remedy certain defects in packetized video streams. Ixia denies all
27 allegations contained in Paragraph 19 of the Complaint not specifically admitted
28 herein.

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1 20. IneoQuest does not specify what “developments and improvements”
2 are referenced in Paragraph 20 of the Complaint; Ixia, therefore, is without
3 sufficient information to admit or deny the allegations of Paragraph 20 of the
4 Complaint as they are set forth, and therefore denies them.

5 21. Ixia is without sufficient information to admit or deny the allegations of
6 Paragraph 21 of the Complaint as they are set forth, and therefore denies them.

7 22. Ixia is without sufficient information to admit or deny the allegations of
8 Paragraph 22 of the Complaint as they are set forth, and therefore denies them.

9 23. Ixia is without sufficient information to admit or deny the allegations of
10 Paragraph 23 of the Complaint as they are set forth, and therefore denies them.

11 24. Ixia is without sufficient information to admit or deny the allegations of
12 Paragraph 24 of the Complaint as they are set forth, and therefore denies them.

13 25. Ixia is without sufficient information to admit or deny the allegations of
14 Paragraph 25 of the Complaint as they are set forth, and therefore denies them.

15 26. Ixia is without sufficient information to admit or deny the allegations of
16 Paragraph 26 of the Complaint as they are set forth, and therefore denies them.

17 27. Ixia is without sufficient information to admit or deny the allegations of
18 Paragraph 27 of the Complaint as they are set forth, and therefore denies them.

19 28. Ixia is without sufficient information to admit or deny the allegations of
20 Paragraph 28 of the Complaint as they are set forth, and therefore denies them.

21 29. Ixia is without sufficient information to admit or deny the allegations of
22 Paragraph 29 of the Complaint as they are set forth, and therefore denies them.

23 30. Ixia admits that, in or about 2004, the Internet Engineering Task Force
24 (“IETF”) published a draft document entitled “A Proposed Media Delivery Index,”
25 and that the draft document identified both IneoQuest and Cisco Systems as the
26 authors of the document. Ixia also admits that the IETF later published versions of
27 the document under the identifier RFC 4445. Ixia further admits that the IETF is an
28 international group of industry participants concerned with the architecture and

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1 operation of the Internet. Ixia also admits that MDI is one statistic related to the
2 delivery of video over networks. Ixia denies all allegations contained in Paragraph
3 30 of the Complaint not specifically admitted herein.

4 31. Ixia is without sufficient information to admit or deny the allegations of
5 Paragraph 31 of the Complaint as they are set forth, and therefore denies them.

6 32. Ixia is without sufficient information to admit or deny the allegations of
7 Paragraph 32 of the Complaint as they are set forth, and therefore denies them.

8 33. As understood, denied.

9 34. Ixia is without sufficient information to admit or deny the allegations of
10 Paragraph 34 of the Complaint as they are set forth, and therefore denies them.

11 35. Ixia is without sufficient information to admit or deny the allegations of
12 Paragraph 35 of the Complaint as they are set forth, and therefore denies them.

13 36. Ixia is without sufficient information to admit or deny the allegations of
14 Paragraph 36 of the Complaint as they are set forth, and therefore denies them.

15 37. Ixia is without sufficient information to admit or deny the allegations of
16 Paragraph 37 of the Complaint as they are set forth, and therefore denies them.

17 38. Denied.

18 39. Ixia is without sufficient information to admit or deny the allegations of
19 Paragraph 39 of the Complaint as they are set forth, and therefore denies them.

20 40. Admitted.

21 41. Denied.

22 42. Ixia admits that it offers numerous products and services that provide
23 test and monitoring solutions for data, voice, video and other applications. Ixia
24 denies all allegations contained in Paragraph 42 of the Complaint not specifically
25 admitted herein.

26 43. Ixia is without sufficient information to admit or deny the allegations of
27 Paragraph 43 of the Complaint as they are set forth, and therefore denies them.

28 44. As understood, denied.

1 45. Ixia states that simulated video packets and real video packets each
2 provide certain benefits. Ixia denies all allegations contained in Paragraph 45 of the
3 Complaint not specifically admitted herein.

4 46. Ixia admits that its customers include manufacturers of network routers
5 and switches, cable companies and broadcast companies. Ixia denies all allegations
6 contained in Paragraph 46 of the Complaint not specifically admitted herein.

7 47. Denied.

8 48. Ixia admits that one of its customers is Cisco and that Cisco designs
9 and sells networking and communications services and technology, including
10 routers for packet-switched networks. Ixia is without sufficient information to admit
11 or deny the remaining allegations set forth in Paragraph 48 of the Complaint, and
12 therefore denies them.

13 49. Ixia admits that its sales to Cisco over the past five years represent
14 approximately 20-35% of Ixia's total annual revenue and that Cisco has been Ixia's
15 largest customer in terms of annual revenue. Ixia further admits that Cisco, and all
16 other Ixia customers, are important. Ixia denies all allegations contained in
17 Paragraph 49 of the Complaint not specifically admitted herein.

18 50. Ixia admits that it was aware in 2004 that Cisco was considering
19 purchasing equipment from IneoQuest. Ixia denies all allegations contained in
20 Paragraph 50 of the Complaint not specifically admitted herein.

21 51. Ixia denies the premise that it had "concerns," and further denies the
22 allegations of Paragraph 51 of the Complaint.

23 52. Ixia admits that it reviewed publicly available information related to
24 IneoQuest's products. Ixia denies all allegations contained in Paragraph 52 of the
25 Complaint not specifically admitted herein.

26 53. Ixia admits that it, along with numerous others the industry, at some
27 point obtained a copy of RFC 4445. Ixia denies all allegations contained in
28 Paragraph 53 of the Complaint not specifically admitted herein.

1 54. Ixia admits that at some point it learned that IneoQuest had presented
2 RFC 4445 to the IETF along with Cisco. As understood, Ixia denies the remaining
3 allegations set forth in Paragraph 54 of the Complaint.

4 55. Ixia admits that Comcast was, and is, a participant in the streaming
5 video industry. Ixia is without sufficient information to admit or deny the
6 allegations regarding Comcast's size and revenues, and therefore denies them. Ixia
7 denies all allegations contained in Paragraph 55 of the Complaint not specifically
8 admitted herein.

9 56. Denied.

10 57. Denied.

11 58. Ixia admits that it did not become a reseller of IneoQuest's hardware.
12 Ixia denies all allegations contained in Paragraph 58 of the Complaint not
13 specifically admitted herein.

14 59. Denied.

15 60. Denied.

16 61. Admitted.

17 62. Ixia admits that it was aware of publicly-available information
18 concerning IneoQuest from IneoQuest's website. As understood, Ixia denies the
19 remaining allegations set forth in Paragraph 62 of the Complaint.

20 63. Ixia is without sufficient information to admit or deny the allegations of
21 Paragraph 63 of the Complaint as they are set forth, and therefore denies them.

22 64. Admitted.

23 65. Ixia admits that the parties signed a mutual non-disclosure agreement,
24 with an effective date of July 7, 2004 (the "2004 Non-Disclosure Agreement"). Ixia
25 also admits that a copy of the 2004 Non-Disclosure Agreement is attached as
26 Exhibit 1, but states that the document speaks for itself. Ixia denies all allegations
27 contained in Paragraph 65 of the Complaint not specifically admitted herein.
28

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1 66. Ixia states that the document speaks for itself, and denies the
2 allegations of Paragraph 66 of the Complaint.

3 67. Ixia admits that the parties scheduled a face-to-face meeting for July
4 23, 2004. Ixia denies all allegations contained in Paragraph 67 of the Complaint not
5 specifically admitted herein.

6 68. Ixia admits that there was an agenda dated July 21, 2004. Ixia denies
7 all allegations contained in Paragraph 68 of the Complaint not specifically admitted
8 herein.

9 69. As understood, Ixia is without sufficient information to admit or deny
10 the allegations of Paragraph 69 of the Complaint as they are set forth, and therefore
11 denies them.

12 70. Ixia admits that Ixia provided information to IneoQuest concerning its
13 position in the video market, and its plans. Ixia admits that it and IneoQuest
14 discussed possible business arrangements. Ixia denies all allegations contained in
15 Paragraph 70 of the Complaint not specifically admitted herein.

16 71. Ixia admits the IneoQuest orally provided information to Ixia regarding
17 IneoQuest's products. Ixia denies that the information conveyed was confidential.
18 Ixia further denies all allegations contained in Paragraph 71 of the Complaint not
19 specifically admitted herein.

20 72. Ixia lacks knowledge and information sufficient to respond to the
21 allegations concerning IneoQuest's beliefs in 2004, and denies such allegations as
22 well as the remaining allegations set forth in Paragraph 72 of the Complaint.

23 73. Denied.

24 74. Denied.

25 75. Denied.

26 76. Ixia admits that it prepared a document in 2004 named "Project
27 Hollywood." Ixia denies that the information contained in the Project Hollywood
28

1 document was or is confidential to IneoQuest. Ixia denies all allegations contained
2 in Paragraph 76 of the Complaint not specifically admitted herein.

3 77. Ixia objects to Paragraph 77 of the Complaint because the allegations
4 therein seek confidential information without the benefit of a protective order. Ixia
5 further states that the Project Hollywood document speaks for itself. As such, Ixia
6 denies the allegations set forth in Paragraph 77 of the Complaint.

7 78. Denied.

8 79. Denied.

9 80. Ixia denies the premise that it had such an "approach," and further
10 denies the allegations of Paragraph 80 of the Complaint.

11 81. Denied.

12 82. Denied.

13 83. Ixia admits that in October and November, 2004, Ixia and IneoQuest
14 provided information to one another. Ixia denies all allegations set forth in
15 Paragraph 83 of the Complaint not specifically admitted herein.

16 84. Denied.

17 85. Ixia admits that IneoQuest and Ixia entered into an "Exclusive
18 Negotiation Period Agreement," and states that the agreement speaks for itself. Ixia
19 denies all allegations contained in Paragraph 85 of the Complaint not specifically
20 admitted herein.

21 86. Ixia admits that IneoQuest signed the Exclusive Negotiation Period
22 Agreement, and that IneoQuest made suggestions as to a potential relationship
23 between it and Ixia. Ixia denies all allegations contained in Paragraph 86 of the
24 Complaint not specifically admitted herein.

25 87. Denied.

26 88. As understood, denied. Additionally, Ixia objects to the allegations of
27 Paragraph 88 as calling for confidential information in the absence of a protective
28 order in place in this case.

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1 89. As understood, denied.

2 90. Ixia objects to the allegations of Paragraph 90 as calling for
3 confidential information in the absence of a protective order in place in this case.
4 Ixia admits that it employed video streams in its IxLoad and IxChariot products.
5 Ixia denies all allegations contained in Paragraph 90 of the Complaint not
6 specifically admitted herein.

7 91. Ixia objects to the allegations of Paragraph 91 as calling for
8 confidential information in the absence of a protective order in place in this case.
9 As understood, Ixia denies the allegations set forth in Paragraph 91 of the
10 Complaint.

11 92. Denied.

12 93. Denied.

13 94. Denied.

14 95. Ixia admits that it has purchased equipment manufactured by
15 IneoQuest. Ixia denies all allegations contained in Paragraph 95 of the Complaint
16 not specifically admitted herein.

17 96. Denied.

18 97. Denied.

19 98. Ixia admits that at some point its IxChariot product could generate
20 certain statistics related to video quality. Ixia denies all allegations contained in
21 Paragraph 98 of the Complaint not specifically admitted herein.

22 99. Denied.

23 100. Denied.

24 101. Denied.

25 102. Denied.

26 103. Denied.

27 104. Ixia admits that some of its products (including IxLoad) contain the
28 ability to generate and analyze multiple video strings, including the ability to

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1 generate statistics related to video quality. Ixia also admits the some of its products
2 include the deployment of software probes across a network for fault isolation
3 purposes. Ixia denies all allegations contained in Paragraph 104 of the Complaint
4 not specifically admitted herein.

5 105. Ixia denies the premise that it engaged in “wrongdoing,” and further
6 denies the allegations set forth in Paragraph 105 of the Complaint.

7 106. Ixia admits that IneoQuest obtained access to certain Ixia documents as
8 part of discovery in another lawsuit between the parties. Ixia is without sufficient
9 information to admit or deny whether and when IneoQuest management had access
10 to Ixia’s documents, and therefore denies allegations related to the same. Ixia
11 denies all allegations contained in Paragraph 106 of the Complaint not specifically
12 admitted herein.

13 107. Ixia denies the premise that it engaged in “wrongdoing,” and further
14 denies the allegations set forth in Paragraph 107 of the Complaint.

15 108. Ixia is without sufficient information to admit or deny the allegations of
16 Paragraph 108 of the Complaint as they are set forth, and therefore denies them.

17 109. Ixia admits that, on the face of Exhibit 2, which purports to be United
18 States Patent Number 7,321,565 (the “‘565 Patent”), entitled “System and Method
19 for Analyzing the Performance of Multiple Transportation Steams of Streaming
20 Media in Packet-Based Networks,” it appears that the ‘565 Patent issued to
21 IneoQuest, as assignee of the named inventors, on January 22, 2008. Ixia denies all
22 allegations contained in Paragraph 109 of the Complaint not specifically admitted
23 herein.

24 110. Ixia admits that it had a copy of RFC 4445 before issuance of the ‘565
25 Patent. Ixia denies all allegations contained in Paragraph 110 of the Complaint not
26 specifically admitted herein.

27 111. Ixia is without sufficient information to admit or deny the allegations
28 set forth in Paragraph 111 of the Complaint concerning IneoQuest’s motivations,

1 and therefore denies them. Ixia denies the remaining allegations contained in
2 Paragraph 111 of the Complaint not specifically admitted herein.

3 112. Denied.

4 113. Denied.

5 114. Denied.

6 115. Ixia is without sufficient information to admit or deny the allegations
7 related to licenses granted by IneoQuest, and therefore denies such allegations. Ixia
8 denies the remaining allegations of Paragraph 115 of the Complaint.

9 116. Denied.

10 117. Ixia denies the premise that it has engaged in wrongdoing, and further
11 denies the allegations set forth in Paragraph 117 of the Complaint.

12 118. Denied.

13 119. Ixia is without sufficient information to admit or deny the allegations of
14 the first sentence of Paragraph 119 of the Complaint as they are set forth, and
15 therefore denies them. Ixia denies the remaining allegations set forth in Paragraph
16 119.

17 120. Ixia denies the premise that it engaged in "blocking," and further denies
18 the allegations set forth in Paragraph 120.

19 121. Ixia denies the various premises of Paragraph 121 of the Complaint,
20 and further denies the allegations set forth in Paragraph 121.

21 122. Denied.

22 Count I

23 Infringement of U.S. Patent No. 7,321,565

24 123. Ixia repeats and incorporates by reference the answers and objections
25 set forth in response to Paragraphs 1 through 122.

26 124. Denied.

27 125. Ixia is without sufficient information to admit or deny the allegations of
28 Paragraph 125 of the Complaint as they are set forth, and therefore denies them.

1 126. Denied.

2 127. Denied.

3 128. Ixia denies the premise that it has committed acts of infringement, and
4 further denies the allegations set forth in Paragraph 128 of the Complaint.

5 129. Denied.

6 Count II

7 Breach of Contract

8 130. Ixia repeats and incorporates by reference the answers and objections
9 set forth in response to Paragraphs 1 through 129.

10 131. Admitted.

11 132. Ixia states that the referenced Agreement speaks for itself, and that the
12 validity and enforceability of the Agreement is in whole or in part a matter of law
13 not susceptible to answer. Ixia denies all allegations contained in Paragraph 132 of
14 the Complaint.

15 133. Ixia is without sufficient information to admit or deny the allegations of
16 Paragraph 133 of the Complaint as they are set forth, and therefore denies them.

17 134. Denied.

18 135. Ixia denies the premise that it has breached the referenced Agreement,
19 and further denies the allegations set forth in Paragraph 135 of the Complaint.

20 Count III

21 Trade Secret Misappropriation In Violation Of The Uniform Trade Secret

22 Act: CA Civil Code §3426

23 136. Ixia repeats and incorporates by reference the answers and objections
24 set forth in response to Paragraphs 1 through 135.

25 137. Denied.

26 138. Denied.

27 139. Ixia denies the premise that IneoQuest possessed trade secret
28 information. Ixia is without sufficient information to admit or deny the allegations

1 related to the protection of secrecy, and therefore denies the same. Ixia denies the
2 remaining allegations set forth in Paragraph 139 of the Complaint.

3 140. Ixia denies the premise that IneoQuest possessed trade secrets, and
4 further denies the allegations set forth in Paragraph 140 of the Complaint.

5 141. Ixia denies the premise related to "wrongful use and disclosure" and
6 further denies the allegations set forth in Paragraph 141 of the Complaint.

7 142. Ixia denies the premise that it has engaged in misappropriation, and
8 further denies the allegations set forth in Paragraph 142 of the Complaint.

9 143. Ixia denies the premise that it has engaged in misappropriation, and
10 further denies the allegations set forth in Paragraph 143 of the Complaint.

11 Count IV

12 Intentional Interference with Contract

13 144. Ixia repeats and incorporates by reference the answers and objections
14 set forth in response to Paragraphs 1 through 143.

15 145. Ixia is without sufficient information to admit or deny the allegations of
16 Paragraph 145 of the Complaint as they are set forth, and therefore denies them.

17 146. Denied.

18 147. Denied.

19 148. Denied.

20 149. Denied.

21 150. Ixia denies the premise that it engaged in wrongful conduct, and further
22 denies the allegations set forth in Paragraph 150 of the Complaint.

23 151. Ixia denies the premise that it has engaged in wrongdoing, and further
24 denies the allegations set forth in Paragraph 151 of the Complaint.

25 Count V

26 Common Law Unfair Competition

27 152. Ixia repeats and incorporates by reference the answers and objections
28 set forth in response to Paragraphs 1 through 151.

1 153. Ixia denies the premise that it has engaged in acts of misappropriation,
2 and further denies the allegations set forth in Paragraph 153 of the Complaint.

3 154. Ixia denies various premises set forth in Paragraph 154 of the
4 Complaint, and further denies the allegations set forth in Paragraph 154.

5 155. Ixia denies the premise that it engaged in "[t]hese acts," and further
6 denies the allegations set forth in Paragraph 155 of the Complaint.

7 156. Ixia denies the premise that it engaged in wrongful conduct, and further
8 denies the allegations set forth in Paragraph 156 of the Complaint.

9 Count VI

10 Unfair Competition in Violation of CA Business and Professions Code

11 §§17200, et seq

12 157. Ixia repeats and incorporates by reference the answers and objections
13 set forth in response to Paragraphs 1 through 156.

14 158. Denied.

15 159. Ixia denies the premise that it engaged in "unlawful uses," and further
16 denies the allegations set forth in Paragraph 159 of the Complaint.

17 160. Ixia denies the various premises set forth in Paragraph 160 of the
18 Complaint, and further denies the allegations set forth in Paragraph 160 of the
19 Complaint.

20 161. Ixia denies the premise that it engaged in "[t]hese acts," and further
21 denies the allegations set forth in Paragraph 161 of the Complaint.

22 162. Ixia denies the premise that it engaged in wrongful actions, and further
23 denies the allegations set forth in Paragraph 162 of the Complaint.

24 163. Ixia denies the premise that it has engaged in wrongful conduct, and
25 further denies the allegations set forth in Paragraph 163 of the Complaint.

26 164. Ixia denies the premise that it engaged in wrongful actions, and further
27 denies the allegations set forth in Paragraph 164 of the Complaint.
28

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Count VII

Intentional Interference with Prospective Economic Advantage

165. Ixia repeats and incorporates by reference the answers and objections set forth in response to Paragraphs 1 through 164.

166. Ixia is without sufficient information to admit or deny the allegations relating to IneoQuest's relationships with third parties, and therefore denies them. Ixia denies the remaining allegations of Paragraph 166 of the Complaint.

167. As understood, denied.

168. As understood, denied.

169. Denied.

170. Ixia denies the premise that it engaged in wrongful conduct, and further denies the allegations set forth in Paragraph 170 of the Complaint.

171. Denied.

Count VIII

Negligent Interference with Prospective Economic Advantage

172. Ixia repeats and incorporates by reference the answers and objections set forth in response to Paragraphs 1 through 171.

173. Ixia is without sufficient information to admit or deny the allegations relating to IneoQuest's relationships with third parties, and therefore denies them. Ixia denies the remaining allegations of Paragraph 173 of the Complaint.

174. As understood, denied.

175. As understood, denied.

176. Denied.

177. Denied.

178. Ixia denies the premise that it engaged in wrongful conduct, and further denies the allegations set forth in Paragraph 178 of the Complaint.

179. Denied.

Count IX

Breach of Confidence

180. Ixia repeats and incorporates by reference the answers and objections set forth in response to Paragraphs 1 through 179.

181. Denied.

182. Ixia admits that it has complied with the terms of the 2004 Non-Disclosure Agreement. Ixia denies all allegations contained in Paragraph 182 of the Complaint not specifically admitted herein.

183. Denied.

184. Ixia denies the premise that it engaged in wrongful conduct, and further denies the allegations set forth in Paragraph 184 of the Complaint.

Count X

Misappropriation of Work Product

185. Ixia repeats and incorporates by reference the answers and objections set forth in response to Paragraphs 1 through 184.

186. Ixia is without sufficient information to admit or deny the allegations set forth in Paragraph 186 of the Complaint, and therefore denies them.

187. Denied.

188. Ixia denies the premise that it has engaged in wrongful actions, and further denies the allegations set forth in Paragraph 188 of the Complaint.

AFFIRMATIVE DEFENSES

Further answering the Complaint, Ixia asserts the following affirmative defenses, without assuming the burden of proof where such burden would otherwise rest with IneoQuest. Ixia expressly reserves the right to amend its Answer and Affirmative Defenses as additional information becomes available and/or is otherwise discovered:

First Affirmative Defense

1. IneoQuest's Complaint fails to state a claim against Ixia upon which relief may be granted.

Second Affirmative Defense

2. IneoQuest is barred from the relief it seeks based upon the principles and doctrines of waiver, estoppel, laches, justification, privilege, and/or acquiescence.

Third Affirmative Defense

3. IneoQuest is barred from the relief it seeks based due to unclean hands.

Fourth Affirmative Defense

4. The Complaint, and each purported cause of action contained therein, is barred by the applicable statutes of limitation including, but not limited to, California Code of Civil Procedure §§ 335 through 349.4.

Fifth Affirmative Defense

5. IneoQuest is barred from the relief that it seeks because the '565 Patent, and each claim thereof, is/are invalid for failure to comply with the requirements of the patent laws of the United States, 35 U.S.C. § 100, et seq., including, but not limited to, those set forth in 35 U.S.C. §§ 101, 102, 103, and/or 112.

Sixth Affirmative Defense

6. By reason of the proceedings in the U.S. Patent and Trademark Office during the prosecution of the applications that matured into the '565 Patent, and in particular, the applicants' and/or their representative(s)' and/or agents' remarks, representations, concessions, amendments and/or admissions during those proceedings, IneoQuest is precluded and estopped from asserting that Ixia has infringed any of the claims of the '565 Patent.

Seventh Affirmative Defense

7. IneoQuest is not entitled to any damages or any other remedy under 35 U.S.C. §§ 284 or 285 with respect to any alleged infringement by Ixia of the '565

1 Patent to the extent that IneoQuest and/or any predecessor owners and/or licensees
2 of the patents have not complied with the notice and/or marking requirements of 35
3 U.S.C. § 287.

4 **Eighth Affirmative Defense**

5 8. Ixia has not made, used, imported, offered for sale or sold in the United
6 States, and is not making, using, importing, offering for sale, or selling any product
7 or method which would infringe any valid and/or enforceable claim of the '565
8 Patent.

9 **Ninth Affirmative Defense**

10 9. Ixia has not contributed to the infringement of, and/or induced the
11 infringement of, any valid and/or enforceable claim of the '565 Patent.

12 **Tenth Affirmative Defense**

13 10. Even if, *arguendo*, IneoQuest possessed confidential or trade secret
14 information, Ixia independently derived its own information without use of that of
15 IneoQuest.

16 **Eleventh Affirmative Defense**

17 11. IneoQuest did not maintain its alleged confidential or trade secret
18 information as in fact secret and confidential.

19 **Twelfth Affirmative Defense**

20 12. The alleged confidential or trade secret information of IneoQuest is not
21 protectable under common law or the California Uniform Trade Secrets Act.

22 **Thirteenth Affirmative Defense**

23 13. The parol evidence rule bars evidence regarding any alleged oral
24 agreements.

25 **Fourteenth Affirmative Defense**

26 14. IneoQuest's contract claims are barred by the statute of frauds and/or
27 there is a failure of consideration.
28

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Fifteenth Affirmative Defense

15. Ixia was justified in all of its actions.

Sixteenth Affirmative Defense

16. IneoQuest failed to mitigate its claimed damages, if any.

Seventeenth Affirmative Defense

17. IneoQuest's claims set forth in Counts IV - X are preempted under California's trade secret statute, California Civil Code § 3426.7.

Eighteenth Affirmative Defense

18. IneoQuest's purported pendent state claims involve, in whole or in part, conduct that is already subject of litigation between the parties in California state court.

Nineteenth Affirmative Defense

19. Pursuant to IneoQuest's participation in the Internet Engineering Task Force ("IETF"), and by way of the Intellectual Property Rights submission IneoQuest made to the IETF, IneoQuest is obligated to grant Ixia a license to claims of the '565 Patent on reasonable non-discriminatory terms, if Ixia so elects.

Twentieth Affirmative Defense

20. Ixia denies that IneoQuest is entitled to recover punitive damages in this action. Further, any award of punitive damages against Ixia in this action would be barred to the extent that it violates the due process and equal protection provisions of the United States and California Constitutions.

WHEREFORE, Ixia denies that IneoQuest is entitled to any relief as prayed for in the Complaint or otherwise and, accordingly, respectfully prays for entry of judgment:

- A. Dismissing IneoQuest's Complaint against Ixia, with prejudice;
- B. Finding that Ixia is not liable to IneoQuest under any of the allegations of the Complaint;

BRYAN CAVE LLP
120 BROADWAY, SUITE 300
SANTA MONICA, CALIFORNIA 90401-2386

1 C. Finding that Ixia has not infringed and is not infringing upon any of the
2 claims of the '565 Patent;

3 D. Finding that each claim of the '565 Patent is invalid;

4 E. Enjoining IneoQuest and/or any of its respective officers, directors,
5 agents, servants, employees, and attorneys, and all persons in active concert or
6 participation with any of them, from directly or indirectly asserting liability under
7 any of the allegations contained in the Complaint and/or infringement against, or
8 instituting any further action for infringement of the '565 Patent against Ixia, or any
9 of its customers, agents, successors and assigns;

10 F. Finding that this case is exceptional pursuant to 35 U.S.C. § 285 and
11 awarding Ixia its reasonable attorneys' fees, expenses and costs incurred in
12 connection with this action; and

13 G. Awarding to Ixia such other and further relief as the Court may deem
14 appropriate under the circumstances.

15 16 COUNTERCLAIMS

17 Counterclaimant Ixia, for its Amended Counterclaims against IneoQuest
18 Technologies, Inc., ("IneoQuest"), states as follows:

19 Nature of the Action

20 1. This Counterclaim seeks, inter alia, a judgment declaring that the
21 claims of United States Patent No. 7,321,565 ("the '565 Patent") are invalid and/or
22 not infringed by Ixia.

23 2. This Counterclaim seeks, inter alia, a judgment declaring that
24 IneoQuest is directly, contributorily and/or inducing infringement of U.S. Patent
25 Nos. 5,881,237, 5,937,165, 5,838,919 and 7,277,395.

26 Jurisdiction and Venue

27 3. This Court has subject matter jurisdiction over these Counterclaims
28 pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq., under 38

1 U.S.C. § 1338(a), and under the patent laws of the United States, 35 U.S.C. § 1, et
2 seq. This Court also has jurisdiction over this dispute pursuant to 28 U.S.C. 28 §
3 1331 and U.S.C. § 1332, in that the amount in controversy exceeds the sum or value
4 of \$75,000, exclusive of interest and costs, and diversity of citizenship exists among
5 the parties. Venue is proper in this judicial district under the provisions of 28
6 U.S.C. §§ 1391 and 1400.

7 The Parties

8 4. Ixia is a corporation organized and existing under the laws of the State
9 of California, with a principal place of business is located at 26601 W. Agoura
10 Road, Calabasas, California 91302.

11 5. Upon information and belief, IneoQuest is a corporation organized and
12 existing under the laws of the Commonwealth of Massachusetts, with a principal
13 place of business is located at 170 Forbes Blvd., Mansfield, Massachusetts 02048.

14 Acts Giving Rise to the Counterclaims

15 6. On November 25, 2008, IneoQuest commenced a civil lawsuit against
16 Ixia alleging that Ixia is infringing upon one or more of the claims of the '565
17 Patent.

18 7. By such action, IneoQuest has created an actual and justiciable case
19 and controversy between itself and Ixia concerning whether the '565 Patent is valid
20 and/or enforceable, as well as whether Ixia is infringing upon any valid and
21 enforceable claim of the '565 Patent.

22 8. IneoQuest markets or has marketed at least two hardware platforms, the
23 Geminus family and the Singulus family, each of which can include a number of
24 supported software applications including IQMediaStimulus, IQMediaAnalyzer Pro,
25 IQDialogue and IQRouter Test Suite. Through the development, marketing, use,
26 sale, and other efforts, such products infringe one or more claims of U.S. Patent
27 Nos. 5,881,237, 5,937,165, 5,838,919 and 7,277,395.

28 COUNT I

Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,321,565

9. Ixia incorporates by reference the allegations set forth in Paragraphs 1 through 8 of these Counterclaims as if fully set forth and restated herein.

10. Ixia has not infringed, and is not infringing, upon any claims of the '565 Patent.

11. Any claims of the '565 Patent that may not be, arguendo, held invalid and/or unenforceable are so restricted in scope that Ixia has not infringed, and does not infringe, upon any such claims.

COUNT II

Declaratory Judgment of Invalidity of U.S. Patent No. 7,321,565

12. Ixia incorporates by reference the allegations set forth in Paragraphs 1 through 8 of these Counterclaims as if fully set forth and restated herein.

13. Upon information and belief, all of the claims of the '565 Patent are invalid, and void, for one or more of the following reasons:

(a) The alleged invention was not new before the applicants' alleged conception and/or reduction to practice;

(b) The alleged invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the alleged invention thereof by the applicants for patent;

(c) The alleged invention was patented or described in a printed publication in this or a foreign country, or were in public use, on sale or sold in this country, more than one year prior to the date of the application thereof in the United States;

(d) The alleged invention was described in a patent granted on an application for patent by another filed in the United States before the alleged invention thereof by the applicants for the patent;

(e) The patentees did not themselves invent the subject matter claimed;

(f) The patentees abandoned the alleged invention;

(g) Before the alleged invention was made by the patentees, said alleged invention was made in this country by others who had not abandoned, suppressed or concealed the same;

(h) The difference between the subject matter sought to be patented in the '565 Patent and the prior art are such that the subject matter as a whole would have been obvious at the time the alleged invention was made to a person having ordinary skill in the art to which said subject matter pertains;

(i) The alleged invention does not involve the exercise of inventive faculty, but only the judgment, knowledge and skill possessed by persons having ordinary skill in the art at the time of the alleged invention thereof by the patentee(s);

(j) The '565 Patent does not contain a written description of the alleged invention, and of the manner and process of making and using them, in such full, clear, concise and exact terms to enable one skilled in the art to which it is directed to make and use it, and, further, does not set forth the best mode contemplated by the alleged inventors of carrying out the alleged invention;

(k) The asserted claims do not particularly point out and distinctly claim the subject matter which the applicants and/or patentees regard as their invention; and

(l) The asserted claims fails to satisfy 35 U.S.C. § 101 as the alleged invention does not transform an article and/or is not tied to a particular machine.

Count III

Patent Infringement of U.S. Patent No. 5,881,237

1 14. Ixia incorporates by reference the allegations set forth in Paragraphs 1
2 through 8 of these Counterclaims as if fully set forth and restated herein.

3 15. Ixia is the owner by assignment of all right, title and interest in, to and
4 under U.S. Patent No. 5,881,237 entitled "Methods, Systems and Computer Program
5 Products for Test Scenario Based Communications Network Performance Testing"
6 ("the '237 Patent"), a copy of which is attached hereto as Exhibit A.

7 16. The '237 is valid, enforceable and was duly issued in full compliance
8 with Title 35 of the United States Code.

9 17. IneoQuest is and has been directly infringing, inducing others to
10 infringe, and/or contributing to the infringement of the '237 Patent by making,
11 using, offering for sale, and/or selling products and/or providing services covered by
12 one or more claims of the '237 Patent.

13 18. IneoQuest's infringement of the '237 Patent is causing irreparable harm
14 and monetary damage to Ixia and will continue to do so unless and until IneoQuest
15 is enjoined and restrained by this Court.

16 19. Upon information and belief, IneoQuest's infringement of the '237
17 Patent has been willful, wanton, deliberate, and without license.

18 20. This case is exceptional pursuant to the provisions of 35 U.S.C. § 285.

19 **Count IV**

20 **Patent Infringement of U.S. Patent No. 5,937,165**

21 21. Ixia incorporates by reference the allegations set forth in Paragraphs 1
22 through 8 of these Counterclaims as if fully set forth and restated herein.

23 22. Ixia is the owner by assignment of all right, title and interest in, to and
24 under U.S. Patent No. 5,937,165 entitled "Systems, Methods and Computer Program
25 Products for Applications Traffic Based Communications Network Performance
26 Testing" ("the '165 Patent"), a copy of which is attached hereto as Exhibit B.

27 23. The '165 Patent is valid, enforceable and was duly issued in full
28 compliance with Title 35 of the United States Code.